

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
EchoStar Technologies L.L.C.)
)
Petition for Waiver of Section 15.117(b) of the)
Commission’s Rules)

ECHOSTAR TECHNOLOGIES L.L.C.
PETITION FOR WAIVER

Pursuant to Section 1.3 of the Commission’s rules,¹ EchoStar Technologies L.L.C. (“EchoStar”) respectfully requests the Media Bureau (“Bureau”) to waive the “all channels” requirement in Section 15.117(b) of the Commission’s rules to permit the importation, marketing, and sale of a new model of “SlingLoaded” high-definition (“HD”), Internet-enabled, digital video recorder (the “SlingLoaded DVR”) that does not include an analog over-the-air tuner.² The Bureau and the Office of Engineering and Technology (“OET”) to date have interpreted the “all channels” provision to mean that any TV receiver that includes an over-the-air digital (ATSC) tuner must also include an over-the-air analog (NTSC) tuner.³ However, the

¹ 47 C.F.R. § 1.3.

² See 47 C.F.R. § 15.117(b). Section 15.117 provides, in relevant part, that “[all] TV broadcast receivers [shipped in interstate commerce or imported into the United States, for sale or resale to the public] shall be capable of adequately receiving all channels allocated by the Commission to the television broadcast service.” 47 C.F.R. § 15.117(a), (b). For purposes of this rule, the term “TV broadcast receivers” includes “devices, such as ... set-top devices that are intended to provide audio-video signals to a video monitor, that incorporate the tuner portion of a TV broadcast receiver and ... can be used for off-the-air reception of TV broadcast signals.” *Id.*

³ See *Dell Inc. and LG Electronics USA, Inc.; Request for Waiver of Section 15.117 of the Commission’s Rules*, Order, 25 FCC Rcd 9172, 9176 ¶ 2 (MB 2010) (“*Dell Waiver Order*”) (citing OET Laboratory Division Knowledge Database, Publication No. 218634 (rel. Dec. 17,

Commission recently proposed to eliminate this requirement as unnecessary.⁴ As the Commission explained in the *Notice*, the Bureau previously has granted waivers of the requirement to manufacturers, including EchoStar,⁵ who demonstrated that omitting analog broadcast tuners from their devices would reduce cost and power consumption, offer consumers additional options for accessing video programming, and enhance consumer choice in video equipment without frustrating the purpose of Section 15.117(b).⁶

EchoStar fully supports the Commission’s proposal,⁷ and the record in that proceeding underscores that the requirement is now unnecessary. EchoStar thus is optimistic that the

2009), available at <https://fjallfoss.fcc.gov/oetcf/kdb/index.cfm>). The All Channel Receiver Act, codified at 47 U.S.C. § 303(s), authorizes, but does not require, the Commission to impose the all-channel requirements in Section 15.117; thus, “the Commission may waive Section 15.117’s provisions regarding signal format reception capabilities for particular devices on public interest grounds.” *See Dell Waiver Order*, 25 FCC Rcd at 9176 ¶ 7.

⁴ *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, 29 FCC Rcd 12536 (2014) (“*Notice*”).

⁵ *EchoStar Technologies L.L.C.; Petition for Waiver of Section 15.117(b) of the Commission’s Rules*, Memorandum Opinion and Order, 28 FCC Rcd 14000 (MB 2013) (“*2013 EchoStar Waiver Order*”). While the *2013 EchoStar Waiver Order* granted a waiver for two specific models of the Channel Master K77, the waiver grant was based on a number of findings that apply equally to the SlingLoaded DVR that is the subject of this Petition. Specifically, as described in more detail herein, both the Channel Master K77 and the SlingLoaded DVR are HD, Internet-enabled DVRs intended for streaming video, and both have an energy-efficient, cost-effective, compact form factor, due to inclusion of only a digital, and not an analog, tuner. EchoStar also is willing, for as long as the analog tuner rule is in effect, to commit to the same labeling, marketing, and retail education program required in the *2013 EchoStar Waiver Order*. Thus, in lieu of a notice-and-comment proceeding, the Bureau could clarify in response to this Petition that the *2013 EchoStar Waiver Order* applies to the SlingLoaded DVR.

⁶ *See id.*, at 12558 ¶ 56 (citing *2013 EchoStar Waiver Order* and *TiVo Inc.; Petition for Waiver of Sections 15.117(b), 15.118(b), 15.123(b)(1), 15.123(c), and 15.123(d) of the Commission’s Rules*, Memorandum Opinion and Order, 28 FCC Rcd 12181 (MB 2013) (“*TiVo Waiver Order*”).

⁷ *See* Comments of EchoStar Technologies L.L.C., ET Docket No. 14-175, at 2 (filed Jan. 12, 2015) (“Continuing this mandate could result in increased costs for consumers and limit

Commission will eliminate the requirement before the new SlingLoaded DVR comes to market. Nevertheless, in an abundance of caution, EchoStar requests the Bureau to temporarily waive the requirement pending the Commission's action or to grant a permanent waiver in the unlikely event the Commission declines to adopt its sound proposal. As discussed more specifically herein, requiring an analog broadcast tuner for the SlingLoaded DVR would lead to increased costs and other burdens that would make this over-the-air set-top box less commercially viable, denying consumers access on a cost-effective basis to innovative technologies.

I. BACKGROUND

Designed and manufactured by EchoStar for use with DISH Network L.L.C. ("DISH") services, the SlingLoaded DVRs will offer consumers access to digital HD television content broadcast over-the-air and video content streamed over-the-top, while also permitting users to view content from almost any broadband-enabled multimedia platform using groundbreaking place-shifting technology from Sling Media.⁸ The combination of over-the-air television content with over-the-top functionality makes the devices a perfect, economical choice for households that have "cut the cord" but wish to supplement their viewing with pay-per-view or subscription over-the-top services. All of this functionality is packaged in a sleek, ultra-thin, energy-efficient form factor that can be used with a TV or monitor.

EchoStar has designed and manufactured innovative set-top boxes for the satellite industry for over 25 years, and the company has served the IPTV and cable set-top box markets for the past five years. In addition to advanced DVR and place-shifting technologies, such as

innovation in the marketplace. Instead, the FCC should provide manufacturers the flexibility to begin to manufacture and sell digital-only TV tuners without needing to first obtain a waiver.").

⁸ Like EchoStar, DISH is an industry leader in innovating video delivery and the customer experience. *See, e.g.,* Emily Steel, *Dish Network Unveils Sling TV, a Streaming Service to Rival Cable (and It Has ESPN)*, N.Y. TIMES, Jan. 6, 2015, at B3, available at <http://nyti.ms/1xvmtqJ>.

Sling, EchoStar's set-top box innovations also include home networking integration, multi-room and multi-tuner capabilities, over-the-top applications, interactivity, and energy efficiency.

EchoStar has been designing and developing the next generation of TV receivers that are able to capture the benefits of digital-only integrated tuners. These devices are capable of receiving broadcast TV signals using the ATSC standard, the digital standard employed for the vast majority of over-the-air video content that consumers receive today. For example, thanks to the waiver previously received from the Bureau,⁹ EchoStar worked with Channel Master to introduce the Channel Master K77 family of HD, Internet-enabled DVRs that enable over-the-air reception of digital HD broadcast signals, simultaneous watch-and-record functionality, and access to streamed, over-the-top content from providers such as Pandora and UTube. These devices have been widely successful, due in large part to EchoStar's ability to deploy them without analog functionality and the accompanying consumer costs. A waiver of the analog tuner requirement for the SlingLoaded DVRs similarly will contribute to the success of these devices by enabling EchoStar to deploy them at a lower cost and with a form factor that is smaller, more streamlined, and more environmentally friendly.

II. A WAIVER WILL PROVIDE THE SAME BENEFITS UNDERLYING PREVIOUS WAIVER GRANTS AND THE PROPOSED RULE CHANGE

Waiver of Section 15.117(b) is appropriate in this case for the same reasons that the Bureau concluded the public interest would be served by a waiver for the Channel Master K77 devices. A waiver will reduce the cost and power consumption of the SlingLoaded DVRs, offer consumers an additional way to access video programming, and enhance consumer choice in video equipment. Meanwhile, consumers will not be adversely impacted by a waiver of the rule for the SlingLoaded DVRs, because those who wish to view the small percentage of analog

⁹ See *supra* n.5.

LPTV and TV translator stations can continue to use their TV sets or other existing equipment for the direct receipt of analog signals. In addition, to ensure that consumers are informed about the capabilities and limitations of the SlingLoaded DVRs, EchoStar is willing to commit to a marketing and labeling program if the Bureau deems it necessary.

A. *A WAIVER OF THE ANALOG TUNER REQUIREMENT WILL PROMOTE CONSUMER CHOICE, COST SAVINGS, AND ENERGY EFFICIENCY*

The SlingLoaded DVR provides a new, innovative mix of broadcast, DVR, and over-the-top video functionality in an ultra-thin, premium quality package that reflects EchoStar's experience as a creative force in home entertainment. The availability of the SlingLoaded DVR will promote cost-effective consumer choice in equipment by adding a new product to the marketplace, and also will promote consumer choice in services for individuals or households seeking a non-MVPD option with no subscription or monthly fee required.

One of the most compelling features of the SlingLoaded DVR – its ultra-thin design – is only possible through extreme economy in choice of components; with an analog tuner, these boxes would be far more bulky, less energy efficient, and less appealing to consumers. In addition, an analog tuner would add significantly to EchoStar's manufacturing costs and, ultimately, to the retail price. This includes certain non-recurring engineering costs, such as adding a board spin or creating a daughter card to support analog tuner circuitry, rerunning thermal calculations, and designing a new chassis. It also includes the added cost of materials on a per-unit basis, which alone could cost consumers from \$20-30 more per device. Designing a new, bulkier chassis to accommodate an analog tuner also would cost EchoStar in projected revenue, as one of the key selling features is intended to be the sleek form factor of the device in its current design.

B. GRANTING A WAIVER FOR THE SLINGLOADED DVRs WILL NOT NEGATIVELY IMPACT CONSUMERS' ACCESS TO ANALOG TV SIGNALS OR PROMOTE CONFUSION

The absence of an analog tuner in this product will not have a negative impact on consumers. Full-power TV broadcast stations stopped broadcasting analog signals more than five years ago, in June 2009.¹⁰ Even if the Commission were to briefly extend the LPTV and TV translator digital transition deadline to align more closely with the timing of the broadcast incentive auction,¹¹ many of these stations already have transitioned, and the remainder will be required to do so in the near future. By the time the SlingLoaded DVRs are brought to market, consumers will be able to use these devices for over-the-air access to all full-power and Class A television stations, as well as most LPTV stations and TV translators. At best, the continued inclusion of an analog tuner could offer only very minor benefits for a very limited number of consumers, and only for a limited period of time. More likely however, consumers seeking access to such channels will continue to use their TV sets or other existing equipment that includes an analog tuner. In any event, the consumers most likely to purchase the SlingLoaded DVRs are well-informed and technically knowledgeable. They are likely looking for premium HD digital broadcast signals and therefore are unlikely to be misled or disappointed by the digital-only functionality of the devices.

Finally, although EchoStar believes a labeling requirement is unnecessary in light of the upcoming low-power digital transition, to assure no consumer confusion, the company is willing to commit to a labeling, marketing, and retail education program that informs consumers and

¹⁰ See, e.g., *Pending Applications and Pleadings Related to Proceedings for New Analog Full-Power Television Stations for Communities in Several States*, Order, 26 FCC Rcd 14301, ¶ 1 (MB 2011).

¹¹ Notice, 29 FCC Rcd at 12539 ¶ 5.

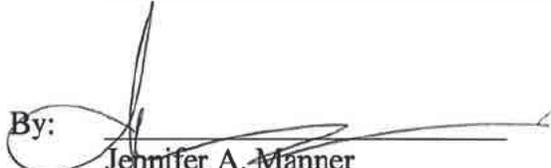
retailers about the capabilities and limitations of the SlingLoaded DVRs.¹² However, any such obligations should be lifted if the Commission in the pending rulemaking proceeding declines, as it should, to impose consumer protection or education measures on broadcast receiver manufacturers and importers who market digital-only equipment prior to the LPTV and TV translator digital transition deadline.¹³

III. CONCLUSION

For the foregoing reasons, EchoStar respectfully urges the Commission to waive the Section 15.117 analog tuner requirement for the SlingLoaded DVRs described herein.

Respectfully submitted,

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¹² See 2013 *EchoStar Waiver Order*, 28 FCC Rcd at 14005 ¶ 8.

¹³ *Notice*, 28 FCC Rcd at 12558 ¶ 58. Even if the Commission imposes such obligations, any labeling, marketing, and education requirements imposed on EchoStar as a condition of the requested waiver should sunset, at the latest, on the date of the LPTV/TV translator digital transition.